

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

CHARLES C. HARBISON,

Plaintiff,

V.

VA DEPT. OF CORR., *et al.*,

Defendants.

Civil Action No. 7:19cv00805

MEMORANDUM OPINION

By: **Hon. Thomas T. Cullen**
United States District Judge

Plaintiff Charles C. Harbison, a Virginia inmate proceeding *pro se*, filed this civil rights action pursuant to 42 U.S.C. § 1983. On October 30, 2020, the defendants filed a motion to dismiss Harbison’s complaint and, on November 2, 2020, the court issued a notice pursuant to *Roseboro v. Garrison*, 528 F.2d 309, 310 (4th Cir. 2005). (*See* ECF Nos. 14 and 16.) The *Roseboro* notice gave Harbison 21 days to file a response to the motion to dismiss and advised him that, if he did not respond to the defendants’ motion to dismiss, the court would “assume that Plaintiff has lost interest in the case, and/or that Plaintiff agrees with what the Defendant[s] state[] in their responsive pleading(s).” (*See* ECF No. 16.) The notice further advised Harbison that, if he wished to continue with the case, it was “necessary that Plaintiff respond in an appropriate fashion,” and that if he failed to file some response within the 21-day period, the court “may dismiss the case for failure to prosecute.” (*Id.*) Harbison did not respond to the motion to dismiss.¹ Therefore, the court will dismiss Harbison’s complaint without prejudice for failure to prosecute.

¹ The court notes that, although Harbison did not respond to the defendants' motion to dismiss, he did file a motion to amend his complaint to add Warden Kanode and Marcus Elam as defendants and remove the

The clerk is directed to forward a copy of this Memorandum Opinion and accompanying Order to Harbison and all counsel of record.

ENTERED this 7th day of December, 2020.

/s/ Thomas T. Cullen
HON. THOMAS T. CULLEN
UNITED STATES DISTRICT JUDGE

Virginia Department of Corrections and River North Correctional Center as defendants. (*See* ECF No. 17.) The court previously denied Harbison's motion as futile because he failed to allege any facts against or conduct committed by the newly proposed defendants. (*See* ECF No. 18.)